IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6392 of 2007()

CR NO. 8/07 OF VAIKOM EXCISE RANGE
CRMP.2292/2007 of ADDL.DISTRICT COURT,KOTTAYAM

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PETITIONER : ACCUSED:

BAIJU T. @ VAVACHAN, AGED 27 YEARS,
S/O.THANKAPPAN, KALAYATTUMTHARA,
EDAYAZHAM, VAIKOM.

BY ADV. SRI.SUJITH MATHEW JOSE

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
(FOR EXCISE CIRCLE INSPECTOR, VAIKOM RANGE
CRIME NO.8/2007, VAIKOM EXCISE RANGE.)

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6392 of 2007

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Dated this the 23rd day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to be handling contraband articles and implements for distillation at 11.45 a.m. on 31.8.2007 at a Padasekharam. 35 litres of wash, a plastic container, a gas stove and a plastic tube are allegedly the articles which were recovered. The petitioner has come out with a specific case. According to him, he was at logger heads with some local persons on account of a dispute between two communities. According to him, there was a specific attempt to falsely implicate him by giving false information to the Excise officials. The petitioner does not make any specific allegation of malafides against the excise officials. The excise officials were misled by the adversaries of the petitioners to launch prosecution against the petitioner. He was not present anywhere near the premises. The allegations are unacceptable.

2. At 11.45 a.m. in broad day light in an open place, the petitioner was alleged to have engaged himself in the objectionable activity of illicit distillation. The Excise officials could have seen through the game if they were alert. But they have simply swallowed the version given by some one. The allegation is that seeing the excise party the miscreant ran away. Some local persons have allegedly given the name of the petitioner, who ran away from the scene. The contemporaneous seizure mahazar as well as the occurrence report do all point to the involvement of the petitioner. The nature of the articles seized leave behind teltale circumstances to conclude that it was not a bonafide allegation raised, submits the learned counsel. The allegation is that activity of distillation was going on there. Who ever be the miscreant, he had allegedly got a gas stove to indulge in the activity of distillation. The gas cylinder was not seized. except a plastic tube, no other article indicating complicity is seen seized.

3. The learned counsel for the petitioner submits that it is easy for an alert mind to perceive that there is an attempt to falsely implicate the petitioner for the reasons which he has explained in the petition. In these circumstances the petitioner may be saved of the trauma of undeserved arrest and incarceration on the allegations raised against him, submits the counsel.

4. The learned Prosecutor does not oppose the application. In the peculiar facts and circumstances of the case, subject to appropriate conditions the petitioner can be granted anticipatory bail, submits the learned P.P. Appropriate conditions may be imposed, which shall ensure a fair, expeditious and efficient investigation, submits the Prosecutor.

5. In the peculiar facts and circumstances of this case, I am satisfied that the petitioner is entitled for issue of directions under Section 438 Cr.P.C.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 30.10.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 31.10.07, and 1.11.2007 and thereafter on all Mondays between 10 a.m. and 12 noon

for a period of one months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 30.10.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 30.10.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 30.10.2007.

(R. BASANT)
Judge

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